THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.3440 of 2006

Dated:19th January, 2007

Between:

K.Tukkaiah.
…..PETITIONER

AND

The Chief General Manager (Telecon),
BSNL., A.P. Circle, Station Road,
Nampally, Hyderabad and 2 others.
….RESPONDENTS

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W.P.No.3440 of 2006

ORDER:

This writ petition is filed seeking to declare the action of the respondents in not permitting the petitioner to rejoin the duty as Temporary Status Mazdoor in the respondent organization even after verification of the genuineness of the Medical Certificates produced by the petitioner as illegal and arbitrary and consequently direct the respondents to permit the petitioner to join the duty with all consequential and incidental benefits.

The petitioner joined the respondent organization in the year 1984 as Casual Mazdoor and was conferred temporary status vide proceedings dated 13-10-1990. The petitioner states that while working as such he fell sick and was compelled to go on leave from 01-02-1994 till 02-08-2000 and the same was covered by the medical certificates. That he submitted application and other certificates for appointment as Regular Mazdoor. When he was not allowed to rejoin the duty and has approached the Central Administrative Tribunal and the said Tribunal directed him to submit a representation to the 3rd respondent along with the copy of the certificates and accordingly he submitted representation on
15-1-2002 and on receipt of the said representation the
3rd respondent referred the matter to the District Medical and Health Officer for verification of the medical certificates. The
3rd respondent again after calling for the details of the treatment given to the petitioner from the D.M.H.O referred the matter to the 1st respondent for necessary orders on 15-09-2003. It is the grievance of the petitioner that despite being received the report from the D.M.H.O, the 1st respondent is not taking any decision in the matter.

A counter affidavit is filed denying the writ averments and stating that the petitioner absconded from the duties of TSM without any intimation and without any leave. That the petitioner approached Central Administrative Tribunal by filing O.A. No. 1468 of 2001 and the same was disposed of directing the petitioner to file a detailed representation with further direction to GMTD, Karimnagar to get the veracity of the documents verified. After verifying the genuineness of the certificates, the matter was referred to AGM (Admn) vide letter dated 15.9.2003 for condonation of break in service for regularization treating him as casual mazdoor. That in terms of letter No. 269-3/92-STN dated 21.10.92 the Chief General Manager is empowered to condone the break in service up to maximum of one year. It is specifically stated that Chief General manager is not empowered to condone the absence of six years and that no government servant can be granted leave of any kind for a continuous period exceeding five years. It is thus specifically stated that in view of the abnormal absence of more than six years, the petitioner cannot be taken back into service as Temporary Status Mazdoor.

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

The writ petition raises disputed questions of fact, namely whether the petitioner was appointed as Temporary Mazdoor as per the Rules and Regulations, whether he absconded from duties of Temporary Mazdoor without any intimation or leave, whether he availed leave with prior approval of the authority, whether he is entitled to rejoin duty after absence of more than six years, whether the Medical Certificate produced by him is genuine or not. These disputed questions of fact, the law is well settled cannot be conveniently gone into a writ proceeding under

Article 226 of the Constitution of India, for the resolution of such questions requires adduction of evidence by both the parties. In such view of the matter, the writ petition cannot be entertained.

Hence, the writ petition is dismissed. This order, however, does not preclude the petitioner from availing the remedies available to him under law. No costs.

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(N.V. RAMANA, J.)

Date: 19th January 2007.
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